

ADVISORY OPINION 2001-006

Any advisory opinion rendered by the registry under subsection (1) or (2) of this section may be relied upon only by the person or committee involved in the specific transaction or activity with respect to which the advisory opinion is rendered. KRS 121.135(4).

September 10, 2001

Hon. Kennedy Helm, III
Stites & Harbison PLLC
400 W Main Street, Ste. 1800
Louisville, Kentucky 40202-3352

Dear Mr. Helm:

This is in response to your August 7, 2001 letter on behalf of City of Louisville Alderman Barbara Gregg requesting an advisory opinion regarding whether previously unexpended campaign funds in Alderman Gregg's campaign account may be used to further Alderman Gregg's campaign for election to the legislative council of Greater Louisville. You provide a legal memorandum in support of your argument, which seeks to distinguish Alderman Gregg's circumstances from other candidates, by arguing that, "[a]lthough the name of the new position will differ, the rights and powers will remain the same."

As you cite in your letter, KRS 121.180(10) governs the disposition of campaign funds, providing in pertinent part:

No candidate ... shall use or permit the use of contributions or funds solicited or received for the person ... to further the candidacy of the person for a different public office, to support or oppose a different public issue, or to further the candidacy of any other person for public office ... Except as provided in KRS 121A.080(6), any unexpended balance of funds not otherwise obligated for the

payment of expenses incurred to further ... the candidacy of a person shall, in whole or in part, at the election of the candidate or committee, escheat to the State Treasury, be returned pro rata to all contributors, or in the case of a partisan candidate, be transferred to the state or county executive committee of the political party of which the candidate is a member except that a candidate, committee, or an official may retain the funds to ... to seek election to the same office or may donate the funds to any charitable, nonprofit, or educational institution recognized under Section 501(c)(3) of the Internal Revenue Code... [Emphasis added.]

Therefore, KRS 121.180(10) clearly prohibits the use of unexpended campaign funds for a candidacy to a different public office.

In support of your argument that the office of Alderman is the “same office” as the office of Legislative Council Member of Greater Louisville, you cite cases addressing the issue of whether state officers may be bound by prior orders or contractual obligations created by their predecessors in office. See, e.g., Wright v. County School Board of Greenville, 309 F. Supp. 671 (E.D. Va. 1970) (applying FRCP 65(d) to extend an injunctive order to bind city officers who were not original parties to the injunctive proceedings), rev’d on other grounds, Wright v. Council of City of Emporia, 442 F. 2d 570 (4th Cir. 1971), cert. granted, 404 U.S. 820 (1971), rev’d, 407 U.S. 451 (1972); Porter v. American Distilling Co., 71 F. Supp. 483 (S.D.N.Y. 1947) (applying FRCP 25(d) to permit the continuance of a court action where the public official plaintiff resigned from office and was succeeded by officer with new title); Cobb v. City of Lincoln, 17 N.W. 365 (Neb. 1883) (defining “same” as relating to legislative intent regarding the compensation of a public officer)¹. These cases are not persuasive in determining whether the offices of Alderman and Legislative Council Member of Greater Louisville are the “same office” within the meaning of KRS 121.180(10).

The clear legislative intent of KRS 121.180(10) is to ensure that contributions are used for the election to the office for which they were solicited. In achieving this purpose, KRS 121.180(10) prevents unexpended funds in a campaign account from being (1) converted for personal use, see also, 2 U.S.C. § 439a (prohibiting federal candidates from using excess campaign funds for personal matters), explained in Stern v. Federal Election Commission, 921 F.2d 296, 298 (D.D.C. 1990); (2) used to circumvent the contribution limits of KRS 121.150; or (3) used for any purpose made unlawful by KRS Chapter 121.

¹ Your analysis adopts a strictly “ordinary meaning” rule of construction. However, Webster’s Dictionary also defines “same” to mean “being one without addition, change, or discontinuance: identical.” Further, “another fundamental rule of statutory construction [is] that statutory language is to be read in pertinent context rather than in isolation.” Oates v. Oates, 866 F.2d 203, 206 (6th Cir. 1989).

KRS 121.180(10) is narrowly tailored to achieve this purpose, permitting candidates several options for disposing of unexpended funds, including to carryover funds to run for the same office, to return contributions pro rata to contributors, or to transfer funds to the candidate's political party.

Therefore, as used within KRS 121.180(10), the "same office" does not mean predecessor in office or the duties assigned to a particular office within a governmental unit. Rather, it means the same office to which a candidate was elected and for which funds were solicited and received to promote the person's candidacy.

The Registry addressed the issue of how to define "same office" in two (2) prior advisory opinions, KREF Advisory Opinion 2000-009 and 2001-004, in which it opined that neither a County Commissioner nor an Alderman could use unexpended campaign funds to further their intended candidacies for Legislative Council Member of Greater Louisville. In support of its opinion, the Registry cited the new state legislation creating a merged government for Louisville and Jefferson County:

[T]he voters of Jefferson County voted to merge the first-class city of Louisville with Jefferson County pursuant to the provisions of KRS Chapter 67C (2000 Ky. Acts. Ch. 189). Under KRS 67C.101, upon approval of the voters, the new consolidated government of Greater Louisville "replaces and supercedes the governments of the pre-existing city of the first class and its county." Further, KRS Chapter 67C creates new public offices for the legislative and executive authorities of the new consolidated local government. See, e.g., KRS 67C.103 (creating the legislative council and its members).

Although the offices of Alderman of Louisville and Legislative Council Member of Greater Louisville may share similar duties, they are not the same office, within the meaning of KRS 121.180(10), by operation of KRS Chapter 67C, which creates a new, merged government encompassing Louisville and Jefferson County and creates new elected officers to run the new Greater Louisville. See, also, KREF Advisory Opinion 2000-010 (opining that the office of Mayor of Louisville is not the same as the office of Mayor of Greater Louisville). The differences in title, constituency and position within a twenty-six (26) member legislative council, as opposed to a twelve (12) member aldermanic board, are significant.

Therefore, under KRS 121.180(10), Alderman Gregg may not use her unexpended funds to support her candidacy for Legislative Council Member of Greater Louisville. However, any unexpended funds may be disposed of in any other manner permitted under KRS 121.180(10).

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This opinion reflects the Registry's consideration of the specific transaction posed by your letter. If you have any additional questions, please do not hesitate to contact the Registry staff.

Sincerely,

Rosemary F. Center
General Counsel

RFC/jh

Cc: Registry Members
Sarah M. Jackson, Executive Director